

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT

2014 DEC 29 PM 4:51

S.D. OF N.Y.W.P.

-----X
MALIBU MEDIA, LLC,

Plaintiff,

vs.

JOHN DOE subscriber assigned IP address
204.210.141.242,

Defendant.
-----X

Civil Action No. _____

**COMPLAINT – ACTION FOR
DAMAGES FOR PROPERTY
RIGHTS INFRINGEMENT**

14 CV 10150

JUDGE SEIBEL

Plaintiff, Malibu Media, LLC, sues Defendant John Doe subscriber assigned IP address 204.210.141.242, and alleges:

Introduction

1. This matter arises under the United States Copyright Act of 1976, as amended, 17 U.S.C. §§ 101 et seq. (the “Copyright Act”).
2. Defendant is a persistent online infringer of Plaintiff’s copyrights. Indeed, Defendant’s IP address as set forth on Exhibit A was used to illegally distribute each of the copyrighted movies set forth on Exhibit B.
3. Plaintiff is the registered owner of the copyrights set forth on Exhibit B (the “Copyrights-in-Suit”).

Jurisdiction And Venue

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338 (patents, copyrights, trademarks and unfair competition).

5. Plaintiff used proven IP address geolocation technology which has consistently worked in similar cases to ensure that the Defendant's acts of copyright infringement occurred using an Internet Protocol address ("IP address") traced to a physical address located within this District, and therefore this Court has personal jurisdiction over the Defendant because (i) Defendant committed the tortious conduct alleged in this Complaint in this State, and (ii) Defendant resides in this State and/or (iii) Defendant has engaged in substantial and not isolated business activity in this State.

6. Based upon experience filing over 1,000 cases the geolocation technology used by Plaintiff has proven to be accurate to the District level in over 99% of the cases.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c), because: (i) a substantial part of the events or omissions giving rise to the claims occurred in this District; and, (ii) the Defendant resides (and therefore can be found) in this District and resides in this State; additionally, venue is proper in this District pursuant 28 U.S.C. § 1400(a) (venue for copyright cases) because Defendant or Defendant's agent resides or may be found in this District.

Parties

8. Plaintiff, Malibu Media, LLC, (d/b/a "X-Art.com") is a limited liability company organized and existing under the laws of the State of California and has its principal place of business located at 409 W. Olympic Blvd., Suite 501, Los Angeles, CA, 90015.

9. Plaintiff only knows Defendant by his, her or its IP Address. Defendant's IP address is set forth on Exhibit A.

10. Defendant's Internet Service Provider can identify the Defendant.

Factual Background

I. Defendant Used the BitTorrent File Distribution Network To Infringe Plaintiff's Copyrights

11. The BitTorrent file distribution network (“BitTorrent”) is one of the most common peer-to-peer file sharing systems used for distributing large amounts of data, including, but not limited to, digital movie files.

12. BitTorrent’s popularity stems from the ability of users to directly interact with each other in order to distribute a large file without creating a heavy load on any individual source computer and/or network. The methodology of BitTorrent allows users to interact directly with each other, thus avoiding the need for intermediary host websites which are subject to DMCA take down notices and potential regulatory enforcement actions.

13. In order to distribute a large file, the BitTorrent protocol breaks a file into many small pieces called bits. Users then exchange these small bits among each other instead of attempting to distribute a much larger digital file.

14. After the infringer receives all of the bits of a digital media file, the infringer’s BitTorrent client software reassembles the bits so that the file may be opened and utilized.

15. Each bit of a BitTorrent file is assigned a unique cryptographic hash value.

16. The cryptographic hash value of the bit (“bit hash”) acts as that bit’s unique digital fingerprint. Every digital file has one single possible cryptographic hash value correlating to it. The BitTorrent protocol utilizes cryptographic hash values to ensure each bit is properly routed amongst BitTorrent users as they engage in file sharing.

17. The entirety of the digital media file also has a unique cryptographic hash value (“file hash”), which acts as a digital fingerprint identifying the digital media file (e.g. a movie). Once infringers complete downloading all bits which comprise a digital media file, the

BitTorrent software uses the file hash to determine that the file is complete and accurate.

18. Plaintiff's investigator, IPP International UG, established a direct TCP/IP connection with the Defendant's IP address as set forth on Exhibit A.

19. IPP International UG downloaded from Defendant one or more bits of each of the digital movie files identified by the file hashes on Exhibit A.

20. Defendant downloaded, copied, and distributed a complete copy of Plaintiff's movies without authorization as enumerated on Exhibit A.

21. Each of the cryptographic file hashes as set forth on Exhibit A correlates to a copyrighted movie owned by Plaintiff as identified on Exhibit B.

22. IPP International UG downloaded from Defendant one or more bits of each file hash listed on Exhibit A. IPP International UG further downloaded a full copy of each file hash from the BitTorrent file distribution network and confirmed through independent calculation that the file hash matched what is listed on Exhibit A. IPP International UG then verified that the digital media file correlating to each file hash listed on Exhibit A contained a copy of a movie which is identical (or alternatively, strikingly similar or substantially similar) to the movie associated with that file hash on Exhibit A. At no time did IPP International UG upload Plaintiff's copyrighted content to any other BitTorrent user.

23. IPP International UG connected, over a course of time, with Defendant's IP address for each hash value as listed on Exhibit A. The most recent TCP/IP connection between IPP and the Defendant's IP address for each file hash value listed on Exhibit A is included within the column labeled Hit Date UTC. UTC refers to Universal Time which is utilized for air traffic control as well as for computer forensic purposes.

24. An overview of the Copyrights-in-Suit, including each hit date, date of first

publication, registration date, and registration number issued by the United States Copyright Office is set forth on Exhibit B.

25. Plaintiff's evidence establishes that Defendant is a habitual and persistent BitTorrent user and copyright infringer.

Miscellaneous

26. All conditions precedent to bringing this action have occurred or been waived.

27. Plaintiff has retained counsel and is obligated to pay said counsel a reasonable fee for its services.

COUNT I
Direct Infringement Against Defendant

28. The allegations contained in paragraphs 1-27 are hereby re-alleged as if fully set forth herein.

29. Plaintiff is the owner of the Copyrights-in-Suit, as outlined in Exhibit B, each of which covers an original work of authorship.

30. By using BitTorrent, Defendant copied and distributed the constituent elements of each of the original works covered by the Copyrights-in-Suit.

31. Plaintiff did not authorize, permit or consent to Defendant's distribution of its works.

32. As a result of the foregoing, Defendant violated Plaintiff's exclusive right to:

(A) Reproduce the works in copies, in violation of 17 U.S.C. §§ 106(1) and 501;

(B) Redistribute copies of the works to the public by sale or other transfer of ownership, or by rental, lease or lending, in violation of 17 U.S.C. §§ 106(3) and 501;

(C) Perform the copyrighted works, in violation of 17 U.S.C. §§ 106(4) and 501, by showing the works' images in any sequence and/or by making the sounds accompanying the

works audible and transmitting said performance of the works, by means of a device or process, to members of the public capable of receiving the display (as set forth in 17 U.S.C. § 101's definitions of "perform" and "publically" perform); and

(D) Display the copyrighted works, in violation of 17 U.S.C. §§ 106(5) and 501, by showing individual images of the works nonsequentially and transmitting said display of the works by means of a device or process to members of the public capable of receiving the display (as set forth in 17 U.S.C. § 101's definition of "publically" display).

33. Defendant's infringements were committed "willfully" within the meaning of 17 U.S.C. § 504(c)(2).

WHEREFORE, Plaintiff respectfully requests that the Court:

(A) Permanently enjoin Defendant and all other persons who are in active concert or participation with Defendant from continuing to infringe Plaintiff's copyrighted works;

(B) Order that Defendant delete and permanently remove the digital media files relating to Plaintiff's works from each of the computers under Defendant's possession, custody or control;

(C) Order that Defendant delete and permanently remove the infringing copies of the works Defendant has on computers under Defendant's possession, custody or control;

(D) Award Plaintiff statutory damages per infringed work pursuant to 17 U.S.C. § 504 (a) and (c);

(E) Award Plaintiff its reasonable attorneys' fees and costs pursuant to 17 U.S.C. § 505; and

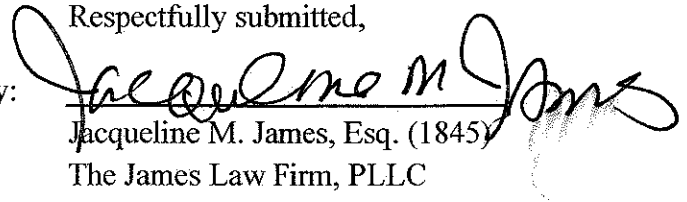
(F) Grant Plaintiff any other and further relief this Court deems just and proper.

DEMAND FOR A JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

By:

A handwritten signature in black ink, appearing to read "Jacqueline M. James", is written over a horizontal line.

Jacqueline M. James, Esq. (1845)

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Attorneys for Plaintiff

File Hashes for IP Address 204.210.141.242

ISP: Time Warner Cable

Physical Location: Poughkeepsie, NY

Hit Date UTC	File Hash	Title
11/10/2014 14:12:20	FC11782B70AA7239F0BA40589D6B845E5722192C	Summertime
10/30/2014 09:01:26	FB19F226C1720F9C293C5E9CB07021829E151D92	One Show For Each
09/21/2014 04:36:17	0C485A86BB4EB968F1BDCD9D362FF25C98C72879	Fun For Three
08/28/2014 19:25:38	3D03F96A8D947928CACB669C7ED7EED03EEC4017	A Dream Of You
08/12/2014 20:41:52	1423B0B774F49970C3E121BF7DD857DA36A5A915	Lying Around
08/12/2014 20:41:42	893FFFE1CCBDB633D86AE3EBEA2C7603F343428D	First and Forever
08/11/2014 16:12:50	3B39460ABF5377A5830F532935B590D40086B834	Girls Night Out
08/11/2014 16:10:03	7EA1D799131C8C0EE553FFE657F77D72690AD429	Breakfast At Eves
08/11/2014 02:19:29	7BAA7A9FAFC637FD0EA6F41BC89C57290827D70E	In the Blind
08/11/2014 02:17:24	46534E73B0D16742309BCAF6FB5D8F8DCEF5EC95	Rock Me Baby
08/10/2014 21:45:00	61C6B894FC9D577FC3C630535621FF80874FF77A	Yours Forever
08/10/2014 21:43:29	F7FAFED627CC028ACA02887C7199AC8CCCCB8428	Carry Me Home
07/30/2014 16:08:17	A016A1312873A644BEAC47F37E842B4318955A06	Body Language
07/24/2014 15:52:54	9E7F2C44FC5FF766611D8E6F0D234BE90D55ED41	Warm Inside
07/23/2014 23:13:49	155DCCB5BE1EF1D4FA0715F9363086D52C1CCE57	No Hurry
07/23/2014 17:17:20	5164978A92B85A0E02BB83908988321A30590905	And Then There Was You
07/23/2014 02:02:07	D46C72FD478307182F7A4A99FA6FEA9C1F697F3C	So Close Together
07/22/2014 04:52:37	5D7F3D57745367656D4B88D0D17F72C3A28617C5	Enjoy My Backdoor
07/06/2014 17:51:34	2A05E9869A686BCAD59ACBAA0203049202AEAE0C	Sexy In The City
04/29/2014 14:41:04	FD0B269279B7F1330CE463A47F61C4998D4D1F2D	Model Couple on Vacation
04/29/2014 13:54:04	CE289A1A7F50AB944152BE9B1B9464BCB5679A67	Lovers at Home
04/18/2014 15:09:25	6D49FF84A616C511D7546281E353CF1102501445	Double Tease

EXHIBIT A

SNY37

Hit Date UTC	File Hash	Title
04/01/2014 13:45:46	A4497ECB9761980BA2629CA7C31C0A241F02AC30	Erotic Stretching and Sex
03/27/2014 16:05:54	08F449D36134BB91DFBBEE8EF99368A3A34B252D	Arrest Me
03/27/2014 15:12:54	B47842D83AE51AB7E2D4F4B54FD5D1591261A5C3	At Home With Tiffany
03/27/2014 14:06:27	612CD41B3EF0921D2E93275EDC826E4F272E8B8D	Introducing Kenzie
03/27/2014 14:06:18	11BBD0678BDD5759E5D8BB9B0CB398ADB9A7D2E2	The Sleepover
03/27/2014 14:05:52	2C3FD24D65BB36097A8D9C0334145DD7224D444A	A Little Time For Myself
03/27/2014 04:00:16	15036C97E11F054B35EC4B131F7749469238B4B3	Season of Love
03/27/2014 03:05:52	8E13B1D31DA1BAF795D7DB2A31ABDB02F70B745A	In for the Night
03/27/2014 02:51:19	682575B3B625CA6B47485CCA605C404ABE372B72	I Am In the Mood
03/25/2014 16:10:08	6D6C71BBD6BA5A37C4863AAAA24F943589F68B26	Making Music
03/25/2014 16:00:55	4842644E88162527E5D4D8B101BCE619983190F4	Raw Passion
03/25/2014 15:52:30	0FDC4744D319DB3683FBAE57013DD6D38DA73440	Zeppelin on Fire
03/09/2014 22:28:54	6913D0A4F6FF5EEC887B1FC1EF932BA34D674EFC	Alone Is A Dream Left Behind
02/01/2014 21:13:22	9FEFF22B7BA424BFB8847B7B41A62450FC059745	So Right Its Wrong
02/01/2014 19:58:44	50382B6B4E631CB819FBD4C6ECE28437FDE333C6	So Young
10/07/2013 14:06:43	308DBD6D714644BF82F7EE8CD484F31C1BAD9F48	Circles of Bliss
10/07/2013 02:17:40	6D294471F6134D1DC8521AC5960DCD850CECD20A	Seeing Double

Total Statutory Claims Against Defendant: 39

Copyrights-In-Suit for IP Address 204.210.141.242

ISP: Time Warner Cable

Location: Poughkeepsie, NY

Title	Registration Number	Date of First Publication	Registration Date	Most Recent Hit UTC
Summertime	PA0001922274	11/09/2014	11/14/2014	11/10/2014
One Show For Each	PA0001921295	10/26/2014	11/06/2014	10/30/2014
Fun For Three	PA0001914731	09/19/2014	09/22/2014	09/21/2014
A Dream Of You	PA0001909516	08/15/2014	08/26/2014	08/28/2014
Lying Around	PA0001872754	12/10/2013	12/15/2013	08/12/2014
First and Forever	PA0001863112	09/21/2013	09/23/2013	08/12/2014
Girls Night Out	PA0001762409	11/14/2011	11/23/2011	08/11/2014
Breakfast At Eves	PA0001909480	08/06/2014	08/26/2014	08/11/2014
In the Blind	PA0001909487	08/08/2014	08/20/2014	08/11/2014
Rock Me Baby	PA0001907592	07/19/2014	07/25/2014	08/11/2014
Yours Forever	PA0001907573	07/15/2014	07/25/2014	08/10/2014
Carry Me Home	PA0001908452	07/29/2014	08/04/2014	08/10/2014
Body Language	PA0001868096	10/26/2013	11/01/2013	07/30/2014
Warm Inside	PA0001820856	01/11/2013	01/13/2013	07/24/2014
No Hurry	PA0001868811	11/07/2013	11/10/2013	07/23/2014
And Then There Was You	PA0001874615	12/31/2013	01/05/2014	07/23/2014
So Close Together	PA0001860976	08/09/2013	09/08/2013	07/23/2014
Enjoy My Backdoor	PA0001904149	06/13/2014	06/19/2014	07/22/2014
Sexy In The City	PA0001905511	06/27/2014	07/02/2014	07/06/2014
Model Couple on Vacation	PA0001874613	12/17/2013	12/26/2013	04/29/2014
Lovers at Home	PA0001868816	11/05/2013	11/10/2013	04/29/2014

EXHIBIT B

SNY37

Title	Registration Number	Date of First Publication	Registration Date	Most Recent Hit UTC
Double Tease	PA0001892183	04/17/2014	04/29/2014	04/18/2014
Erotic Stretching and Sex	PA0001862293	09/08/2013	09/08/2013	04/01/2014
Arrest Me	PA0001871941	11/25/2013	11/29/2013	03/27/2014
At Home With Tiffany	PA0001880496	02/17/2014	02/21/2014	03/27/2014
Introducing Kenzie	PA0001862286	09/07/2013	09/08/2013	03/27/2014
The Sleepover	PA0001838600	04/23/2013	04/28/2013	03/27/2014
A Little Time For Myself	PA0001877474	01/28/2014	01/31/2014	03/27/2014
Season of Love	PA0001877252	01/18/2014	01/26/2014	03/27/2014
In for the Night	PA0001874670	01/06/2014	01/06/2014	03/27/2014
I Am In the Mood	PA0001880672	02/25/2014	02/27/2014	03/27/2014
Making Music	PA0001883769	03/07/2014	03/22/2014	03/25/2014
Raw Passion	PA0001860979	08/18/2013	09/02/2013	03/25/2014
Zeppelin on Fire	PA0001874614	01/04/2014	01/05/2014	03/25/2014
Alone Is A Dream Left Behind	PA0001860984	08/24/2013	09/10/2013	03/09/2014
So Right Its Wrong	PA0001872084	12/01/2013	12/04/2013	02/01/2014
So Young	PA0001877472	01/25/2014	01/31/2014	02/01/2014
Circles of Bliss	PA0001833297	03/20/2013	04/01/2013	10/07/2013
Seeing Double	PA0001824840	02/02/2013	02/07/2013	10/07/2013

Total Malibu Media, LLC Copyrights Infringed: 39

EXHIBIT B

SNY37